

***Proposed amendments and Reporter's Notes to Rules 33(a), 41(b), and 77(d) of the Massachusetts Rules of Civil Procedure:***

**\* New matter is underlined; matter to be omitted is lined through**

**MASSACHUSETTS RULES OF CIVIL PROCEDURE**

**RULE 33. INTERROGATORIES TO PARTIES**

REVISED VERSION OF RULE 33(a)(6), showing existing language and changes:

(6) *Entry of Judgment.* Upon receipt of the application for final judgment and only if accompanied by a copy of the final request for answers and by the required affidavit as set forth above, the clerk shall enter an appropriate judgment, subject to the provisions of Rules 54(b), 54(c), 55(b)(1), 55(b)(2) (final sentence), ~~55(b)(4) (final sentence)~~, 55(b)(6) (4) and 55(c).

REVISED VERSION OF RULE 33(a)(6), showing new language only:

(6) *Entry of Judgment.* Upon receipt of the application for final judgment and only if accompanied by a copy of the final request for answers and by the required affidavit as set forth above, the clerk shall enter an appropriate judgment, subject to the provisions of Rules 54(b), 54(c), 55(b)(1), 55(b)(2) (final sentence), 55(b)(4) and 55(c).

**Reporter's Notes--2009**

Amendments to Rule 55(b) effective March 1, 2008 eliminated differing default provisions for the Superior Court and the District Court and resulted in changes to the numbering of some of the subparagraphs of Rule 55(b). The March 2008 amendments were part of a group of amendments to the Massachusetts Rules of Civil Procedure in light of the adoption of the statewide one-trial system for civil cases.

The 2009 amendment to Rule 33(a)(6) corrects an oversight in the March 2008 amendments by correcting the cross-references to Rule 55(b) that are found in Rule 33(a)(6).

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**RULE 41. DISMISSAL OF ACTIONS**

REVISED VERSION OF RULE 41(b)(3), showing existing language and changes:

(3) *Effect.* Unless the dismissal is pursuant to paragraph (1) of this subdivision (b), or unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision (b) and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, ~~or~~ for failure to join a party under Rule 19, or for improper amount of damages in the Superior Court as set forth in G.L. c. 212, § 3 or in the District Court as set forth in G.L. c. 218, § 19, operates as an adjudication upon the merits.

REVISED VERSION OF RULE 41(b)(3), showing new language only:

(3) *Effect.* Unless the dismissal is pursuant to paragraph (1) of this subdivision (b), or unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision (b) and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, for failure to join a party under Rule 19, or for improper amount of damages in the Superior Court as set forth in G.L. c. 212, § 3 or in the District Court as set forth in G.L. c. 218, § 19, operates as an adjudication upon the merits.

#### **Reporter's Notes--2009**

An amendment to Rule 12(b), effective March 1, 2008 added a new numbered defense, 12(b)(10), dismissal for improper amount of damages in the Superior Court as set forth in G.L. c. 212, § 3 or in the District Court as set forth in G.L. c. 218, § 19.

The 2009 amendment to Rule 41(b)(3) makes clear that such a dismissal does not operate as an adjudication upon the merits unless the court orders otherwise.

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### **RULE 77. COURTS AND CLERKS**

REVISED VERSION OF RULE 77(d), showing existing language and changes:

**(d) Notice of Orders or Judgments.** Unless an order or judgment is entered in open court in the presence of the parties or their counsel, the clerk shall immediately upon the entry of an order or judgment serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. ~~In the District Court, such notice shall indicate the court's ruling on any requests for rulings which may have been made.~~ Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4 of the Massachusetts Rules of Appellate Procedure or Rule 4 of the District/Municipal Courts Rules for

Appellate Division Appeal, and except as relevant to a motion for relief from judgment under Rule 60(b)(6) of the Massachusetts Rules of Civil Procedure.

REVISED VERSION OF RULE 77(d), showing new language only:

**(d) Notice of Orders or Judgments.** Unless an order or judgment is entered in open court in the presence of the parties or their counsel, the clerk shall immediately upon the entry of an order or judgment serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4 of the Massachusetts Rules of Appellate Procedure or Rule 4 of the District/Municipal Courts Rules for Appellate Division Appeal, and except as relevant to a motion for relief from judgment under Rule 60(b)(6) of the Massachusetts Rules of Civil Procedure.

#### **Reporter's Notes--2009**

Amendments to Rule 52(c) effective March 1, 2008 require findings of fact and rulings of law in jury-waived cases in the District Court if a party timely submits proposed findings and rulings. The March 2008 amendments were part of a group of amendments to the Massachusetts Rules of Civil Procedure in light of the adoption of the statewide one-trial system for civil cases. These amendments also deleted Rule 64A, which provided that a party seeking rulings of law in jury-waived cases in the District Court must submit to the court Requests for Rulings of Law.

In light of the elimination of the procedure involving Requests for Rulings of Law, the 2008 amendment deleted the following sentence from Rule 77(d): "In the District Court, such notice shall indicate the court's ruling on any requests for rulings which may have been made." The deletion of this sentence is not intended to change the existing practice by which the clerk sends to the parties or counsel a copy of the court's findings and rulings.